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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1990

Addendum

AUSTRALIA

[27 August 1991]

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INTRODUCTION

Preparation and structure of report

1. Australia ratified the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ("the Convention") on 8 August 1989. Pursuant to article 27, the Convention came into force for Australia on 7 September 1989.

2. This is Australia's first report to the Committee Against Torture and covers the period from 7 September 1989 to 31 December 1990. It is submitted by Australia in accordance with the requirements of article 19, paragraph 1, of the Convention and the guidelines adopted by the Committee Against Torture at its 49th meeting.

3. The report has been prepared by the federal Attorney-General's Department after consulting relevant federal Departments and the Governments of the states, the Northern Territory and the Australian Capital Territory.

4. Part I of this report provides information on Australia's land and people, political structure, the legal framework within which human rights are protected and the measures taken to promote human rights in Australia.

5. Part II provides a detailed analysis of law and practice in Australia in relation to each of the Articles in Part I of the Convention.

I. GENERAL INFORMATION

Land and people

6. Information compiled by the Australian Bureau of statistics, dealing with Australia's population including ethnicity, language, religion, income, life expectancy, infant mortality and a range of economic indicators, is provided as appendices to this report.

7. Appendix A contains extracts from Australian Bureau of Statistics publications "Census 86 - Australia in Profile" and Census 86 - Religion in Australia". The information provided gives an overview of Australia's growing population and the cultural diversity of its population, including statistics on language spoken and religious background. Also at Appendix A is information on a recent study of literacy in Australia.

8. Appendix B is an extract from an Australian Bureau of Statistics publication "Deaths, Australia, 1989". The extract provides a summary of the median age at death for males and females and the infant mortality rate, including an analysis of that rate by state or territory.

9. Appendix C is an extract from an Australian Bureau of Statistics publication "Australian Economic Indicators March 1991". The extract provides a summary of Australia's gross domestic product over a ten-year-period. The extract also details Australia's balance of payment, current account deficit, rate of inflation, labour force status and unemployment, and statistics on relation of foreign debt to GDP.

General political structure

10. This section describes briefly the political framework in Australia, the type of government and the organization of the executive, legislative and judicial organs.

11. Australia has a federal constitutional system in which legislative, executive and judicial powers are shared or distributed between the Commonwealth and the six states - New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania. In each of these political units there is a parliament elected by the people; an executive, responsible to that parliament, formed by the majority party or parties in parliament; and an independent judiciary.

12. In addition to the states, there are also a number of Australian territories which are those parts of Australia not part of a state. Australia has ten territories in all. The inhabited territories are:

(a) Mainland territories:

- The Australian Capital Territory (which includes Canberra, the capital city of Australia and seat of the federal Government);
- The Northern Territory;
- The Jervis Bay Territory;

(b) External territories:

- The Australian Antarctic Territory;
- Norfolk Island;
- Cocos (Keeling) Islands;
- Christmas Island.

The uninhabited territories, which are all external to the mainland are:

- The Territory of Ashmore and Cartier Islands;
- The Coral Sea Islands Territory; and
- The Territory of Heard Island and McDonald Islands.

13. Information on the size and population of the states and territories is at Appendix D.

14. Two of the territories - the Australian Capital Territory and the Northern Territory - are self-governing and may be regarded, for the purposes of this report, as standing in substantially the same position as a State of Australia. A third territory - Norfolk Island - has more limited legislative and executive government to enable it to run its own affairs to the greatest practicable extent.

15. Under the Northern Territory (Self-Government) Act 1978 and associated legislation, the Northern Territory has separate political, representative and administrative institutions and its own system of courts. The Northern Territory's Legislative Assembly has power to make laws for the peace, order and good government of the Territory. Similarly, the Australian Capital Territory (Self-government) Act 1988 establishes the Australian Capital Territory as a separate body politic, with its own legislative assembly and executive. The Australian Capital Territory Magistrates Courts have been transferred to the Australian Capital Territory government system from the federal system, and the Supreme Court will be transferred no later than 1 July 1992. Hereinafter, references to the states include reference to the Australian Capital Territory and the Northern Territory unless otherwise indicated.

16. The federal Government is responsible for the administration of the remaining territories.

General legal framework

17. This section contains information on Australia's legal system, the authorities with jurisdiction affecting human rights, the remedies available on complaint of a violation of human rights, including compensation, the laws by which human rights are protected and the status of human rights instruments in Australian law. This section also discusses the legal regime particularly relevant to Australia's obligations under the Convention against Torture.

18. The laws applying in Australia fall into two broad categories:

(a) Legislation in the form of statutes passed by a parliament or subordinate legislation made by the executive pursuant to powers conferred by the Parliament which is subject to disallowance by Parliament; and

(b) Rules derived from decisions of courts, being:

(i) The common law proper (that is, laws developed through judicial recognition independent of any legislative enactment); and

(ii) Judicial interpretation of legislation

19. In the Australian legal system, every person, whether private citizen or government official, is equally subject to the law. Governments must operate through and within the law. Government officials must have legal authority for their actions and are subject to legal sanctions if they contravene the law, including sanctions for breach of the criminal law. Disciplinary proceedings may also be brought against government officials.

20. In Australia, treaties like the Convention are not self-executing. The provisions of treaties to which Australia has become a party do not become part of domestic law by virtue only of the formal acceptance of the treaty by Australia (Simsek v. McPhee (1982) 148 CLR 636). Obligations which Australia accepts under an international convention may be met by domestic legislation or by administrative action, either specifically implementing the Convention or providing more generally for the rights or duties which the Convention recognizes or creates.

21. Human rights are protected in Australia by a range of measures, including some constitutional guarantees, state and federal legislation, the common law, and the safeguards of a democratic system of government with an independent judiciary and a free press.

22. While there is no formal embodiment of the major human rights instruments in the Australian Constitution, some guarantees are expressly provided in the Constitution, as follows:

(a) Any property acquired by the Commonwealth must be acquired on just terms (sect. 51 (xxxi));

(b) All indictable Commonwealth offences are to be tried by jury (sect. 80);

(c) Interstate trade, commerce and intercourse shall be free (sect. 92);

(d) The Commonwealth shall not make any law to establish any religion or to interfere with religious freedom (sect. 116);

(e) Citizens are not to be subjected to any disability or discrimination in any State by reason of residence in another State (sect. 117); and

(f) All Australians entitled to vote may vote in federal elections (sects. 7, 24 and 41).

23. The guarantees mentioned in sections 51 (xxxi), 80 and 116 of the Constitution only relate to interference by the federal Government with the rights of citizens. There are considerable areas of law dealing with, or capable of affecting, human rights which are within the jurisdiction of the states and territories. The constitutions of some states expressly provide guarantees of certain civil and political rights. For example, section 46 of the Constitution Act 1934 (Tasmania) provides a guarantee of freedom of religion.

24. The recognition in Australia of many of the basic human rights is based on the enunciation of these rights over the centuries by judges in common law. Thus, for example, the right to personal liberty and many of the procedural rights contained in the International Covenant on Civil and Political Rights (ICCPR) are provided for in the common law.

25. The role of the judiciary is also important in protecting human rights and fundamental freedoms. The judiciary in Australia is fully independent and jealously preserves this independence. It has a legal tradition oriented towards protecting the rights of individuals - particularly in their relations with the State - and is able to draw upon a highly developed set of legal principles to assist in this respect (particularly, in this context, the principles of evidence and natural justice).

26. Judges are appointed by the executive federally and in each of the states. Each of the states and territories has its own system of courts, consisting of a supreme court, in most jurisdictions an intermediate court (known as the District Court or County Court), and courts of summary jurisdiction. State and territory supreme courts have jurisdiction to hear both criminal and civil cases under the civil and criminal law of that state or territory. Intermediate courts and courts of summary jurisdiction have jurisdiction within the limits imposed by state or territory law.

27. The Supreme Courts are the highest state and territory courts and deal with the most important civil litigation and the most serious criminal cases. They also exercise appellate jurisdiction from the lower state courts and a full court of a supreme court can hear appeals from a decision of the Supreme Court when constituted by a single judge. The intermediate courts, which are presided over by a single judge, decide the great majority of serious criminal offences. They also deal with civil litigation up to certain monetary limits.

28. The Federal Court of Australia and the Family Court of Australia are courts established under federal legislation. The Federal Court of Australia hears appeals from decisions of the Supreme Court of the Australian Capital Territory.

29. The High Court of Australia is at the apex of the Australian judicial system. In addition to its original jurisdiction, the High Court is the final court of appeal from the state and territory courts.

30. The major statutory protections of human rights in Australia are contained in a number of pieces of legislation at state and federal level establishing specialized human rights institutions. In addition to existing laws and institutions which operate to safeguard human rights, Australia has legislation, both state and federal, which deals specifically with human rights.

31. In the federal sphere the Human Rights and Equal Opportunity Commission is established under the Human Rights and Equal Opportunity Commission Act 1986 ("HREOC Act"). The Commission is an independent body, consisting of a President, a Human Rights Commissioner, a Race Discrimination Commissioner, a Sex Discrimination Commissioner and a Privacy Commissioner. These officers are statutory office holders appointed for a fixed term by the Governor-General in Council.

32. The Commission has a range of functions conferred on it by statute, including receiving and investigating complaints of breaches of human rights, conciliating between parties to such complaints, promoting an understanding and acceptance of human rights in Australia, undertaking research and educational programmes for the purpose of promoting human rights, examining legislation to determine its consistency with human rights standards, and reporting to the federal Attorney-General on action that should be taken by Australia on matters relating to human rights. Human rights are defined by reference to the ICCPR, which is a schedule to the HREOC Act.

33. The Commission also has functions in respect of the Declaration of the Rights of the Child, the Declaration on the Rights of Disabled Persons, the Declaration of the Rights of Mentally Retarded Persons, and the Discrimination (Employment and Occupation) Convention 1958 (ILO Convention No. 111), all of which are schedules to the HREOC Act.

34. Other federal legislation protecting human rights includes:

(a) The Privacy Act 1986, which gives more particular effect to the right to privacy recognized in article 18 of the ICCPR, and develops this in more detail by reference to guidelines produced by the Organisation for Economic Cooperation and Development;

(b) The Racial Discrimination Act 1975, implementing most of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination affecting employment and human rights, as well as making racial discrimination unlawful in specified areas such as employment, education and provision of goods and services;

(c) The Sex Discrimination Act 1984, implementing most of the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women. This Act makes sex discrimination unlawful in the administration of federal laws and programmes and in certain specified areas such as employment, education and access to services.

35. Four of the states, namely New South Wales, Victoria, South Australia and Western Australia, also have anti-discrimination legislation. Such legislation is at various stages of development in the other two states and

the two internal territories. (Where state legislation overlaps with federal legislation, it has been necessary for savings clauses to be inserted in the federal legislation to ensure that state anti-discrimination legislation is not invalidated. This would otherwise occur by virtue of section 109 of the Constitution.)

36. A number of states have legislation which provides for a broader range of protections against discrimination than the grounds prohibited under federal legislation. For example, New South Wales anti-discrimination legislation prohibits discrimination on the following grounds:

- Race (including colour, nationality, and ethnic or national origin);
- Sex;
- Marital status;
- Physical and intellectual impairment;
- Homosexuality.

37. There is close cooperation, and broad agreement, between the Commonwealth and the states and territories on human rights matters. A standing committee of the Attorney-General of the federal Government and the states and territories considers international human rights instruments before signature or ratification by Australia.

38. As outlined at paragraphs 31-36, there is machinery at both state and federal level which protects human rights.

39. In the federal sphere, complaints of infringements of human rights, as elaborated in the instruments which are schedules to the HREOC Act, may be made to the Human Rights and Equal Opportunity Commission.

40. The Commission is empowered to attempt to reach a conciliated settlement of human rights complaints against federal authorities, and to report to the Attorney-General if such a settlement cannot be reached.

41. The processes of the Commission under the Human Rights and Equal Opportunity Commission Act may be contrasted to the different processes established under the Sex Discrimination Act and the Racial Discrimination Act. While under these Acts the Commission has promotional, educational and policy functions in relation to these forms of discrimination similar to functions under the Human Rights and Equal Opportunity Commission Act, the complaint-handling functions and powers under the first two Acts are significantly broader. While human rights complaints are restricted to complaints against federal agencies, the Racial Discrimination Act applies to discrimination by any body or person. The Sex Discrimination Act applies to individuals, corporations and federal authorities, and to state Governments except in employment matters.

42. The Sex Discrimination Commissioner and Race Discrimination Commissioner are empowered to attempt to reach a conciliated settlement between the complainant and the alleged discriminator. If a solution acceptable to both parties cannot be reached, the matter may be referred for a full hearing by the Commission. The Commission may make findings as to whether discrimination has occurred and order a wide range of remedies, including but not restricted to financial compensation. (However, these orders are not self-executing: if not complied with they must be enforced by a new hearing in the Federal Court of Australia.)

43. Each of the states which has anti-discrimination legislation (see para. 35) also has a board or tribunal empowered to hear and determine complaints under the state's legislation.

44. In general, acts which fall within the Convention definition of torture and acts which would constitute cruel, inhuman or degrading treatment or punishment are criminal offences in all Australian jurisdictions. Criminal offences are mainly created under state law, although the federal Parliament may create criminal offences in relation to those matters for which it has constitutional responsibility.

45. Each state has its own criminal law. Australian criminal law is derived originally from the common law of England. However, Queensland, Tasmania, Western Australia and the Northern Territory have enacted criminal codes, thereby departing from the original common law as a source of reference. New South Wales, South Australia and Victoria have extensive statutes on criminal law but have not restated the law in a process of codification. The Australian Capital Territory applies the criminal law applicable in New South Wales at the time of the establishment of the Territory as amended by subsequent Acts and Ordinances of the Territory. Similarly, Norfolk Island criminal law is that of New South Wales as adopted by the Territory in 1936 and amended since then by Norfolk Island Acts and Ordinances. In the Australian Antarctic Territory, the Territory of Heard Island and McDonald Islands, the Coral Sea Islands Territory and the Jervis Bay Territory, the applicable criminal law is that applying in the Australian Capital Territory. In the Territory of Ashmore and Cartier Islands, the criminal law is that of the Northern Territory. The criminal law in the territories of Cocos (Keeling) Islands and Christmas Island is that of the Penal Code of Singapore as amended by subsequent ordinances made for those Territories under the Cocos (Keeling) Islands Act 1955 and the Christmas Island Act 1958 respectively. The applicability and operation of the Singapore Penal Code in these territories is presently under review by the Australian Government.

46. With the exception of the Australian Capital Territory (see para. 81), Australian jurisdictions do not have a specific offence of "torture" as defined in the Convention. However, acts which would amount to torture fall within the general criminal law. Relevant offences include assault, the infliction of bodily harm, sexual assault, rape, the making of threats to kill or injure, causing bodily harm and the deprivation of liberty. A full discussion of relevant criminal offences and the penalties which apply upon conviction is set out at paragraph 83.

47. A victim of the unlawful use of force may bring an action in tort for damages against the transgressor or some other person vicariously liable for the transgressor (such as an employer, including the government). Damages may be sought for both physical injury and nervous shock. Damages are assessed to compensate for loss of earning capacity and enjoyment of the amenities of life, medical and other consequent expenses and for pain and suffering (Todorovic v. Waller (1981) 150 CLR 402). Exemplary, or punitive, damages may also be awarded where circumstances so warrant.

48. The federal Parliament has enacted legislation to implement Australia's obligations under the Convention in relation to acts of torture committed outside the ordinary jurisdiction of state and territory criminal law. The Crimes (Torture) Act 1988 creates the federal offence of torture, committed where a person, irrespective of nationality or citizenship, commits an act of torture as defined in the Convention outside of Australia and subsequently enters or is brought into Australia. The effect of the Crimes (Torture) Act is to apply the criminal law which applies in that part of Australia where the person is brought or enters to the acts committed outside of Australia. This legislation is discussed at paragraph 88 and is attached at Appendix E.

49. Police and prison officers are not only bound by the rules of the general criminal law, but their obligations and duties as officers are further elaborated in the relevant codes of conduct applicable to them (see paras. 102-107).

50. Were a police or prison officer to commit acts amounting to torture, the officer would be liable to charges under the criminal law and charges arising under the specific statutes, rules, regulations or orders which govern such officers' conduct. Penalties for relevant criminal offences are as set out in paragraph 83. Disciplinary proceedings provide for such penalties as fines, suspension from service or dismissal from office. Allegations of torture by police or prison officers can also be dealt with under special police complaint-handling legislation in some jurisdictions. A full discussion of the procedures for investigation of police or prison officers' conduct is set out at paragraphs 111 to 119.

51. Queensland, and South Australia have specialist independent tribunals to hear complaints against police officers. In all other jurisdictions, complaints may be made to the Ombudsman, an independent person appointed to investigate complaints about actions of government or its agencies. Details of the complaints processes are provided in paragraphs 111 to 119.

52. The laws of all Australian jurisdictions provide for a system of compensation for harm suffered as a result of criminal acts. The amount of such compensation is primarily recoverable from the offender, but in practice is generally met by means of a payment from public funds. The compensation systems are detailed in paragraphs 122 to 127.

Information and publicity

53. This section provides information on the efforts made to promote awareness of human rights in Australia.

54. The functions of the Commission, as set out in the HREOC Act, include:

(a) Promoting an understanding and acceptance, and the public discussion, of human rights in Australia;

(b) Undertaking research, educational and other programmes, on behalf of the Commonwealth, for the purpose of promoting human rights and coordinating any such programmes undertaken by any other persons or authorities on behalf of the Commonwealth; and

(c) Preparing, and publishing in such manner as the Commission considers appropriate, guidelines for the avoidance of acts or practices which may be inconsistent with or contrary to any human rights.

55. The Commission fulfils its functions in respect of publicity and promotion of human rights by an active programme of publications, speaking engagements and seminars. Details of promotional activities undertaken by the Commission in the last financial year are at Appendix F.

56. Australia's obligations to report on the implementation of the human rights treaties to which Australia is a party are met by the preparation of reports by relevant federal Government Departments, as follows:

Treaty	Department responsible for coordination
International Covenant on Civil and Political Rights	Attorney-General's Department
International Covenant on Economic, Social and Cultural Rights	Department of Foreign Affairs and Trade
Convention on the Elimination of All Forms of Discrimination against Women	Office of Status of Women in Department of Prime Minister and Cabinet
International Convention on the Elimination of all Forms of Racial Discrimination	Department of Foreign Affairs and Trade
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Attorney-General's Department

II. INFORMATION IN RELATION TO ARTICLES IN PART I OF THE CONVENTION

Article 1

57. This article defines torture and provides that the article is without prejudice to international or domestic legislation which may be of wider application.

58. The definition is incorporated in domestic legislation in the Crimes (Torture) Act 1988, which is discussed at paragraphs 87 to 88 and in the Crimes Act 1900 in its application to the Australian Capital Territory, which is discussed at paragraph 81.

Article 2

59. Any intentional use of force against a person, save in certain clearly defined circumstances, is a criminal offence in all Australian jurisdictions. Details of the relevant criminal offences are set out at paragraph 83.

60. The use of force in modern societies is clearly permissible in a variety of circumstances, for example, in consensual contact sport. Similarly, force may be used by public officials in specified circumstances, for example:

(a) In the prevention of crime, or the effecting of a lawful arrest; or

(b) In the course of a lawful correction of a child by a teacher or person in loco parentis.

In these examples, the use of force by public officials is only permisslbe provided no more force is used than is reasonably necessary.

61. Where force is used in such cases by public authorities, the pain and suffering which arises will not constitute torture, as the definition of torture contained in article 1 excludes "pain or suffering arising only from or inherent in or incidental to lawful sanctions".

62. Furthermore, the circumstances in which reasonable force may be lawfully used in Australia do not include the use of such force for the purposes described in article 1 of the Convention, namely the obtaining of a confession, punishment, intimidation, coercion, or for reasons of discrimination.

63. The relevant criminal legislation is the responsibility of state governments (see paras. 75-83) with the exception of federal legislation covering extraterritorial jurisdiction discussed at paragraphs 87 to 88.

64. The use of force by police and prison officers is regulated by laws, regulations, orders and codes of conduct. These are detailed at paragraphs 102 to 107.

65. The judiciary in each of the jurisdictions in Australia is independent and applies the provisions of the criminal law to government officials as to any other individual.

66. In addition to any criminal penalties which may be applicable, there is also common law protection against the extraction of confessions by torture in the judicial control of the admissibility of evidence. Details of the restrictions on the admission of evidence obtained unfairly, illegally or by coercion or inducement are at paragraphs 130 to 131.

67. There is no provision in Australian law for exceptions to the prohibition on torture in case of war, threat of war, internal political instability or other public emergency. Nor can an order from a superior officer be invoked as a justification of torture. Officers of the police or correctional services are required only to obey lawful orders of their superiors, which would not include an order to commit torture.

68. For example, in the Northern Territory, this requirement is found in Determination No. 1, pursuant to section 90 of the Prisons (Correctional Services) Act 1980, which states at 29 (a) that "an officer shall obey all lawful instructions given to him by the Superintendent or an Officer who is senior to him or under whose control or supervision he is placed". The Queensland Police Code of Conduct provides that officers shall obey any lawful direction, instruction or order given by the Commissioner and any superior officer in the normal line of command. Regulation 5 of the Australian Federal Police Discripline Regulations requires members to obey lawful directions from superior officers.

69. The Crimes (Torture) Act specifically provides, at section 11, that it is not a defence in a proceeding for an offence under that Act that the act of torture was committed out of necessity arising from war, threat of war, internal political instability, public emergency or any other exceptional circumstance, nor that the act of torture was committed under the orders of a superior officer or public authority (see appendix E).

Article 3

70. Australia acts in accordance with its obligation under this article by providing asylum to persons who are refugees under the 1951 Convention relating to the Status of Refugees and the 1967 Protocol. Australia is a party to both the Convention and the Protocol. Australia is therefore obliged not to expel or return ("refouler") a person with a well-founded fear of persecution by reason of his/her race, religion, nationality, political opinion or membership of a particular social group, to the frontiers of territories where his/her life or freedom would be threatened. These obligations are fulfilled in Australia under the provisions of the Migration Act, which provides for the grant of entry permits to persons who are refugees within the meaning of the Refugee Convention. The key provision in the Migration Act is section 47 which permits the relevant Minister to grant a permanent entry permit to a non-citizen who has entered Australia, is the holder of a valid temporary permit and has been determined by the Minister to have the status of refugee within the meaning of the 1951 Convention and the 1967 Protocol relating to the Status of Refugees.

71. Applications for refugee status may be made by all persons physically within Australia; the process for applying for refugee status is explained to people who claim to fear torture if returned to their country of origin.

During the reporting period, applications for refugee status have been assessed by a specialist refugee determination committee which consisted of representatives of relevant federal government Departments and was advised by a representative of the United Nations High Commissioner for Refugees. That committee, in the course of its deliberations, considered any relevant information relating to the existence of patterns of human rights violations in the state concerned. The Committee made a recommendation in each case as to the applicant's refugee status to the Minister responsible for immigration, whose task it was to decide the matter and to decide the question of entry and residence permits.

72. New arrangements for determining applications for refugee status are currently being introduced. The refugee status determination procedures now provide for a two-tier decision-making process, with review on the merits of the case at the second tier. Under the new system, applications are decided initially by a delegate of the Minister responsible for immigration, after the applicant has had the opportunity to see any adverse assessment and provide comments or material in relation to the assessment. Applicants who are found not to be refugees have access to a review of that decision by a specialist Refugee Status Review Committee which is similar in composition to the previous Committee but includes a representative nominated by a non-governmental organization. It is advised by a representative of the United Nations High Commissioner for Refugees. The Committee makes a recommendation as to the applicant's refugee status to the Minister responsible for immigration or his delegate, whose task it is to decide the matter and to decide the question of entry and residence permits.

73. The new system also permits the Minister to grant entry permits to non-citizens on humanitarian grounds in cases where applicants for refugee status do not meet the technical definition of a refugee yet face a grave and individualized threat to their safety if returned to the country of origin. Such cases may be identified through the determination of the refugee status process outlined above, which allows for the Review Committee to recommend that the Minister consider granting a temporary entry permit on humanitarian grounds where an applicant is not a refugee but is likely to face a significant individualized threat to his/her personal security on return.

74. A non-citizen may be liable for deportation if she or he commits a serious crime in Australia. In making a decision as to deportation in criminal cases, the Minister takes into account a variety of factors including the legitimate human rights of the individual concerned, the obligations Australia has under international treaties and any hardship the individual would suffer, including evidence of likely persecution in the country to which the person would be deported.

Article 4

75. Acts of torture which involve the infliction of physical pain and suffering are offences under Australia's criminal law. The criminal law similarly prohibits attempts to commit offences, and aiding or abetting or conspiring to commit offences.

76. Attempts to commit offences are subject to the same penalties under federal criminal law and under the criminal law of New South Wales, Tasmania and the Australian Capital Territory as if the offence had been committed. Victoria imposes the same penalty as if the offence had been committed but with a maximum penalty of 15 years' imprisonment. The other jurisdictions impose lesser penalties for attempts, in the range of 7 to 14 years' imprisonment.

77. Different penalties for aiding or abetting in the commission of an offence are imposed depending on whether the accused is charged with being an accessory before or after the fact. Accessories before the fact are liable to the same penalties as if they had attempted to commit an offence. Accessories after the fact are treated more leniently in most Australian jurisdictions. Under federal and Queensland criminal law, accessories after the fact are subject to a maximum panalty of 2 years' imprisonment. In New South Wales the maximum penalty is 5 years. In South Australia the maximum penalty is 5 to 10 years.

78. In those jurisdictions which specifically provide for an offence of conspiracy, the penalty is the same as for attempts, except in Western Australia where the maximum penalty is 7 years with hard labour. Some jurisdictions also make it an offence to counsel, procure or incite the commission of a crime.

79. The criminal law in all Australian jurisdictions prohibits assault, which is defined as the intentional application of force to another person without that person's consent, or an act or gesture by which the person threatens to apply such force in circumstances where the person making the threat either has, or causes the other person to believe on reasonable grounds that he or she has, the means to carry out the threat.

80. Mental pain and suffering are less directly covered by the criminal law. There is common law authority for the view that an assault which causes a hysterical or nervous condition is an assault occasioning actual bodily harm as much as an assault causing physical injury (R. v. Miller (1954) 2 QB 282). Furthermore, any course of conduct which causes severe mental pain and suffering is likely to involve the perpetrator in acts which are offences, such as deprivation of liberty, threats and common assault.

81. Section 35 of the Crimes Act 1900 in its application to the Australian Capital Territory specifically proscribes acts of torture as defined by the Convention.

82. The Tasmanian Criminal Code also creates an offence where a public officer, under cover of exercising his office, wilfully and unlawfully inflicts upon any person any bodily harm, imprisonment or other injury. This provision is broadly framed and would include most acts amounting to torture.

83. Offences relevant to acts of torture attract penalties of imprisonment in all jurisdictions. The criminal law applicable in each of Australia's states and territories is broadly similar. Representative provisions of state and territory criminal law are as summarized below:

OFFENCE	MAXIMUM PENALTY
Grevious bodily harm	14 years
Unlawful wounding	7 years
Serious assault	3 years
Common assault	1 year
Assault occasioning bodily harm	3 years
Deprivation of liberty	3 years
Going armed so as to cause fear	2 years
Threatening violence	1 year
if committed at night	2 years
Sexual assault	life imprisonment with hard labour

Western Australia

Grevious bodily harm	7 years
Wounding	3 years
Common assault	18 months
Occasioning actual bodily harm	2 years
Indecent assault	4 years
Sexual assault	life imprisonment

Australian Capital Territory

Intentionally inflicting grevious bodily harm	15 years
Recklessly inflicting grevious bodily harm	10 years
Wounding	5 years
Assault occasioning actual bodily harm	5 years
Inflicting actual bodily harm	5 years
Common assault	2 years
Acts endangering life	10-15 years
Acts endangering health	5 years
Threat to kill	10 years
Threat to inflict grevious bodily harm	5 years
Demands accompanied by threats	10-20 years
Forcible confinement	10 years
Torture	10 years
Sexual assault	12-17 years

Northern Territory

Grevious bodily harm	14 years
Bodily harm	2-5 years
Assault	1-5 years
Sexual assault	7 years to life
Kidnapping	7-20 years
Deprivation of liberty	7 years
Threats to injure	2 years

Tasmania

Wounding Assault Rape Unlawful acts intended to do grevious bodily harm	All offences attract a maximum of 21 years' imprisonment

South Australia

Unlawful wounding	5 years
Grevious bodily harm	life
Malicious wounding	5 years
Common assault	3 years
Actual bodily harm	5 years
Rape	life imprisonment
Indecent assault	8 years

Article 5

84. Offences committed within Australia are covered by the criminal law, as previously discussed.

85. Offences committed on ships registered in Australia are subject to the criminal law of the states and territories by virtue of the Crimes at Sea Act 1979. That Act applies the criminal law of an appropriate state or territory to offences committed on or from Australian ships when on inter-state and state-territory voyages, on overseas voyages or when in a foreign country. In certain specified cases, offences committed on or from foreign ships journeying to Australia will also be covered. The Act operates to apply the criminal law of the state or territory into which the offender is brought or enters to the offence committed on or from the ship. The Act also applies the criminal laws of the adjacent state or territory to off-shore areas beyond the territorial sea that come under Australian jurisdiction (for example, off-shore installations such as oil rigs).

86. The Crimes (Aircraft) Act 1963 operates to make the criminal law of the Australian Capital Territory apply to acts committed on Australian aircraft or on aircraft in Australia or journeying to or from Australia.

87. In addition to the measures dealt with in paragraphs 84-86, Australia takes the view that paragraphs 1 (b) and 2 of article 5 oblige Australia to establish jurisdiction over torture offences committed outside Australia where:

(a) The person is an Australian citizen; or

(b) The person is present in Australia.

88. These obligations have been met by the creation of offences under the Crimes (Torture) Act 1988 (Appendix E), which incorporates the Convention as a schedule to the Act and defines torture as it is defined in the Convention. The effect of the Crimes (Torture) Act is to apply to a person who has committed acts of torture outside Australia the criminal law which applies in

that part of Australia where the person is present. The penalty to be imposed upon conviction is the same as would have been applicable had the person committed the offence in the relevant state or territory.

89. Australia interprets paragraph 3 of article 5 as having no operation in relation to Australia, having regard to the status of the Convention in Australia's legal system (see paragraph 20).

Article 6

90. Were cases involving allegations of torture to arise, the police would follow the normal procedure of investigating an alleged offence. All possible forensic, scientific and documentary evidence would be collected. The victim and any witnesses would be interviewed and statements taken. After all available evidence had been collated, the persons suspected of committing the offence would be interviewed or a warrant for their arrest issued. After interview and/or arrest, the person might be charged with an offence. He or she would then be remanded either in custody or on bail, depending on the circumstances of the case. These processes are consistent with the obligations in articles 4.1 and 4.2. In relation to extraterritorial offences, section 8 of the Crimes (Torture) Act specifically provides that a person arrested for an offence against the Act may be charged with the offence and may be remanded in custody or on bail, but can be discharged if proceedings are not commenced within a reasonable time. (See also para. 87)

91. Australia is party to the Vienna Convention on Consular Relations. Article 36 of that Convention requires a State which is holding a national of another State in detention to inform, if the detainee wishes, the consular post of the sending State without delay of the person's detention and to permit visits by, and communication with, consular officers. All state and territory governments have been informed of the obligations under article 36 and have incorporated these in the standing orders, rules and regulations which govern the conduct of police and correctional officers. The Crimes (Torture) Act provides specifically, at section 13, that non-citizens who are in custody in respect of an alleged offence against that Act are entitled to the assistance referred to in article 6.3 (see Appendix E).

Article 7

92. As discussed above at paragraphs 84 to 88, alleged perpetrators of torture who are present in Australia are subject to the criminal law, whether the acts of torture were committed within or outside of Australia. The normal process of prosecuting offenders against the criminal law would apply, that is a decision as to prosecution is made based on the availability and quality of evidence and whether, in the light of the provable facts and the whole of the surrounding circumstances, the public interest requires a prosecution to be pursued.

93. As acts of torture are prohibited under the criminal law, the standards of evidence and the manner of decision-making by prosecutors and courts are necessarily the same in cases involving allegations of torture as in any other criminal case.

94. In Australia, all persons are equal before the courts. The right to a fair hearing is guaranteed by the existence of an independent judiciary, through the rules of procedure and evidence, by provision of legal representation and interpreter services, and through the remedies available where allegations of unfairness are made about the manner in which a case is heard, including the right to appeal to a higher court.

95. The competence of the judiciary is ensured by requiring professional qualifications and an appropriate level of experience for appointments to judicial office. The judiciary is independent in Australia. Judges may only be removed from office in limited circumstances involving proven misbehaviour or proven incapacity. Procedures for the removal of judges from office are laid down in the Australian Constitution and in the relevant state legislation.

96. Courts in Australia are bound by the rules of procedure and evidence, which operate to ensure fairness at a trial. Except in special circumstances or where express provision is made to the contrary, all courts are open courts to which the public have free access. Courts may be closed or details suppressed from the public view where this appears necessary to the presiding judge in the interest of justice or for the protection of the parties to the case. A fundamental precept of the Australian system of justice is that a person is presumed innocent until proven guilty. The prosecution in criminal cases must prove its case "beyond reasonable doubt". Accused persons also have certain other rights and guarantees which operate to ensure the fairness of criminal trials. These include the provision of an interpreter if the accused person cannot understand or speak English sufficiently to understand the nature of the proceedings, the right to communicate with legal counsel, the availability of legal aid if needed, the right to trial without unreasonable delay, the right to have adequate opportunity to prepare a defence, the right to defend a charge either in person or through counsel, and the common law protection against self-incrimination.

Article 8

97. Australia notes and accepts the deeming provision of article 6.1, that offences involving acts of torture are deemed to be extraditable offences in any existing extradition treaty. Australia is of the view that any existing extradition treaty relationships with other States parties to the Convention against torture will have been modified by the Convention to the extent required by article 8, paragraph 1. In respect of extradition treaties concluded after Australia became a party to the Convention, Australia seeks agreement of the other party as to the offences which will be extraditable. It is Australia's practice to have the following offences extraditable, subject to the agreement of the other party:

(a) Any offence which is known to the laws of both countries and which carries the requisite maximum penalty - usually one or two years;

(b) Any offence required to be extraditable by a multilateral convention to which both parties are States parties.

98. In relation to paragraphs 2 and 3, Australia does not make extradition conditional on the existence of a treaty. Furthermore, regulations under the Extradition Act specifically provide for extradition in cases involving acts of torture to States parties to the Convention with which Australia does not have general extradition arrangements. (Attached at Appendix G).

99. In relation to paragraph 4, Australian treaty practice is to include the ground that the offence alleged did not take place in the requesting country as a discretionary ground of refusal, to be exercised only where Australia does not itself claim extraterritorial jurisdiction. As extraterritorial jurisdiction has been established by Australia as required under article 5, there would be no scope for exercising the discretion.

Article 9

100. The Mutual Assistance in Criminal Matters Act 1987 (attached at Appendix H) facilitates the provision and obtaining by Australia of international assistance in criminal matters, including the obtaining of evidence, documents or other articles and the location and identification of witnesses or suspects.

101. Section 13 of this Act permits Australia to compel persons to give evidence in relation to the prosecution of a criminal matter in another country. No treaty or other arrangement is required between Australia and a country requesting that evidence be taken in Australia for a criminal proceeding in the requesting country. The obligations assumed under article 9 of the Convention can thus be met under section 13 of the Act. Section 8 of the Act prescribes the circumstances in which assistance under section 13 may or shall be refused. The provisions of this section are rarely invoked. They include the power to refuse assistance where the offence charged is of a political character or is a military offence.

Article 10

102. Police and prison officers in each jurisdiction are trained in the relevant criminal law applicable to their duties. This training details the circumstances in which force may be used and emphasizes that force is only to be applied where necessary and to the minimum extent necessary. The situations where force may be used include actions in self-defence, for the prevention of injury to the detained person or other persons, in making an arrest and for preventing escape from detention. Officers are advised that the use of force where it is not reasonably necessary or the use of excessive force are unlawful and will attract criminal liability. Officers are instructed that no threat or inducement may be made to obtain a confession from a person in detention. Officer training includes training in relation to the custody and welfare of prisoners and training in conflict management, to enable a solution to be found without requiring physical restraint. Where physical restraint is required, prison officers are taught to apply it in the least injurious and restrictive way possible.

103. For example, the Tasmanian Police Reference Manual Orders provide that:

Unnecessary violence in making an arrest shall be avoided (Order 400.2(4)):

[Officers] shall treat persons under arrest with the courtesy to which all members of the public are entitled (Order 400.7);

Persons under arrest shall be afforded no justification for saying that their treatment has been other than civil and reasonable (Order 400.7);

When iterrogating persons suspected of having committed offences, any threat, promise or inducement to secure an answer to a question is prohibited (Order 408.9(4));

The interviewing officer is required to take the interrogated person to a senior officer independent from the investigation who is to record whether there are any complaints as to the manner in which the person interrogated has been treated by officers (Order 408.9).

104. Similarly, the Code of Conduct for Officers of the Queensland Corrective Services Commission provides that:

Officers will respect and protect the dignity of all offenders;

Officers will manage each case with appropriate concern for the offender's welfare.

105. Executive Director's Rules made under the Western Australian Prisons Act provide for the use of physical force and restraint where they are necessary. Rule 2K expressly provides that no officer shall torture a prisoner; torture is defined in Rule 2K 4.2 in the same terms as in the Convention.

106. In New South Wales, regulations made under the Prisons Act in relation to prison discipline provides that:

Order and discipline are to be maintained with firmness, but with no more restriction or force than is required for safe custody and well-ordered community life within the prison (R 155(1));

At all times, the treatment of prisoners is such as to encourage their self-respect and a sense of personal responsibility (R. 155(3));

In dealing with a prisoner, a prison officer must use no more force than is reasonably necessary in the circumstances, and the infliction of injury on the prisoner is to be avoided if at all possible (R. 157(1)).

107. The New South Wales Prisons Regulations also prohibit certain punishments, including torture and cruel, inhuman or degrading treatment or punishment (R. 154(1)(b)(iii) and (iv)).

108. The detention of members of the defence forces who have committed offences under the Defence Force Discipline Act 1982 or the Regulations made under that Act is subject to regulations which govern the treatment of such detainees. In particular, the types of punishment which may be imposed for such offences are limited by legislation to imprisonment, dismissal or suspension from the defence force, reduction in rank, or a range of lesser punishments such as fines and reprimands. Section 101H of the Defence Force Discipline Act provides that persons in detention under the Act are to be treated with humanity and with respect for human dignity, and are not to be subjected to cruel, inhuman or degrading treatment. Detailed instructions made under the Act for the administration of military detention centres include instructions against the use of force on detainees (Defence Instructions 58-1, paras. 14 (d) and 15 (e)).

109. Medical education and professional ethical codes, together with the taking of the Hippocratic Oath, ensure and underline the particular responsibility of the medical profession towards the preservation of life and the minimization of suffering. In relation to mentally ill persons, mental health legislation makes it an offence to ill-treat or wilfully neglect a psychiatric patient. Penalties for these offences are 6 to 12 months imprisonment or substantial fines or both.

Article 11

110. All rules and practices regarding the custody and treatment of persons in detention, including their interrogation where applicable, are subject to ongoing internal review in all Australian jurisdictions. Review is carried out routinely by administrative authorities responsible for the development and maintenance of the various rules, regulations and standing orders. For example, the Queensland Police Manual is frequently reviewed and updated by the Manual Section of the Police Service. In addition, the administrative bodies established in each jurisdiction to investigate complaints about police or correctional officers have the function of reviewing the rules relevant to the conduct giving rise to a complaint (see paras. 111-119).

Articles 12 and 13

111. As noted above, if acts amounting to torture were to be committed, they would be offences under the criminal law and so would be investigated and prosecuted as any other criminal offence. Where allegations of torture relate to acts of police or prison officers, there are also special procedures in all jurisdictions to ensure a competent investigation of such allegations.

112. Complaints about police conduct are generally dealt with at first instance by an internal investigation body, subject to review or monitoring by an external body such as the Ombudsman. For example, in the Northern Territory, complaints about police actions may be made to the police or to the Ombudsman. Complaints made to the police are investigated by a commissioned officer of police under guidelines agreed to by the Ombudsman's office.

113. Several jurisdictions have created specific legislative schemes for the investigation of complaints about police. The South Australian Police (Complaints and Disciplinary Proceedings) Act 1985 provides for the creation of a separate branch within the police force to carry out investigations relating to police conduct. These investigations are under the oversight of the Police Complaints Authority, an independent office appointed by the State Governor. The Authority may also decide to investigate matters itself. A report of the internal investigation branch into any complaint is to be supplied to the Authority for its recommendations as to the action to be taken. The Police Commissioner is either to implement the recommendations of the Authority or, in case of disagreement, is to refer the matter to the relevant Minister for decision.

114. In other jurisdictions, the Ombudsman, who has an extensive jurisdiction to receive complaints about a wide range of government actions, has been conferred with the function of investigating complaints about police conduct. Tasmanian Police Standing Orders provide that complaints against police, including breaches of the Police Disciplinary Code, may be made to a netural impartial person. In practice, the Ombudsman is the appropriate person to receive such complaints. In the Australian Capital Territory, the Complaints (Australian Federal Police) Act 1981 ensures that people may make complaints against the police without being subject to ill-treatment or intimidation. The Act allows for complaints to be made either to the Commonwealth Ombudsman or to an internal investigation division within the police force. Investigations conducted by the Internal Investigation Division are subject to the oversight of the Ombudsman and the results of an investigation are to be provided to the Ombudsman. The Ombudsman is empowered to make recommendations as to the action to be taken. If the recommendations are not implemented, the recommendations may be referred to the Minister and ultimately to the Parliament.

115. In relation to prisons, complaints may be made to official visitors or inspectors, who are independent persons with a statutory function of visiting prisons and inquiring into the treatment and condition of prisoners. The Ombudsman also has jurisdiction in most states to receive complaints about the treatment of prisoners.

116. In Queensland, the Corrective Services Act 1988 provides for the appointment of inspectors to investigate matters on behalf of the Corrective Services Commission. In addition, Official Visitors, who are drawn from interested sectors of the community, have wide powers to interview, investigate and report. Prisoners also have access to the Division of Prisoner Welfare, an internal administrative authority responsible for receiving and investigating complaints as well as monitoring operational procedures, and to the Parliamentary Commissioner for Administrative Investigations. An External Investigation Unit of experienced police officers is attached to the Queensland Corrective Services Commission to investigate any potentially criminal activities in prisons and to institute court action where appropriate.

117. In the Northern Territory. investigations into the actions of prisons officers are conducted by the Criminal Investigation Branch of the Northern Territory Department of Corrective Services at first instance. The Police

Prosecutions Section evaluates the investigation material and decides whether or not to prosecute. If a decision not to prosecute is taken, the matter is referred to the Department of Law for a second independent analysis of the case, and prosecution will proceed if the Department of Law believes that it should. Northern Territory prisoners have the right to make complaints to the Superintendent or to an Offical Visitor, and to write uncensored letters to the Minister, the Ombudsman of the Northern Territory and of the Commonwealth of Australia, the prisoner's legal representative, the Director of Correctional Services, the federal Attorney-General, or the federal Human Rights Commissioner.

118. In the federal sphere, persons who believe that their human rights have been infringed may make a complaint to the Human Rights and Equal Opportunity Commission (which is described at paras. 31 to 33 and 39 to 40). Section 20(6) of the Human Rights and Equal Opportunities Commission Act 1986 provides for federal prisoners to make confidential complaints to the Human Rights and Equal Opportunity Commission.

119. Disciplinary proceedings may be brought against members of the Australian Federal Police under the Complaints (Australian Federal Police) Act 1981. Such proceedings are heard by the Federal Police Disciplinary Tribunal, established under the same Act.

120. Defence Force Instructions regulating the treatment of military personnel in military detention require that detainees are to be informed of the right to make complaints concerning their treatment and are to be given the opportunity to make complaints to the officer in charge of the detention centre; such complaints are to be recorded and investigated without delay (Defence Instructions 58-1, paras. 15(e) and (g), paras. 113-114).

121. The investigation of such complaints is governed by the Defence Force Regulations (Statutory Rules 1985, No. 156), which provide for the prompt investigation of complaints by a superior officer, with the opportunity for further investigation by more senior officers on the request of the complainant. The regulations provide for the redress of any grievance found to be justified.

Article 14

122. All jurisdictions provide for compensation under Criminal Injuries Compensation legislation, which is broadly similar throughout Australia. An act of torture would amount to a criminal offence and would attract the right to compensation.

123. For example, in Queensland, the relevant provisions are section 663A to 663E of the Criminal Code. The compensation scheme provides that a person may apply for compensation for injury suffered by him or her where a person is convicted of any indictable offence. The court may make an award in favour of the applicant, based on the amounts prevailing in the workers' compensation jurisdiction and such award may be enforced through the court or may be paid out of state revenue by means of an ex gratia payment. "Injury", for the purposes of the scheme, means bodily injury and includes mental shock and nervous shock.

124. The South Australian Criminal Injuries Compensation Act 1978 provides that the victim of an offence may apply for an order of compensation. There is a general ceiling on compensation of $20,000. In the event of the victim's death, dependants may apply for compensation for financial loss and spouses or parents (if the victim was under 18) may apply for compensation for grief.

125. The Australian Capital Territory Criminal Injuries Compensation Act 1983 provides that a court may award up to $20,000 for an injury sustained as a result of criminal conduct of another person.

126. In Tasmania, the Australian Capital Territory, South Australia and the Northern Territory, there is a statutory provision for compensation for relatives of or those who maintained a deceased victim of crime.

127. In addition, in all jurisdictions, victims of crime or the relatives of a deceased victim have the right to bring a civil action in the courts for damages. Damages may be awarded for physical injury, nervous shock, medical or other expenses and financial loss.

128. Australia has a universal health care financing scheme known as Medicare, which provides insurance against the cost of a comprehensive range of services rendered by medical practitioners in private practice, as well as providing free treatment in public hospitals. In addition to this general access to health services available to all residents of Australia, there are specialized services for the treatment and rehabilitation of torture and trauma victims in the States of New South Wales, Victoria and Queensland, where the majority of Australia's population lives. A further service is proposed to be established in South Australia in the near future. These services receive funding from both the federal Government and the relevant states, and largely cater for refugees and others who suffered torture or trauma prior to their arrival in Australia. In addition, a support and referral service was recently established in the Australian Capital Territory; this service is being funded by the Australian Territory Government.

129. These agencies provide a range of services to victims of torture and trauma, including assessment, counselling, advocacy, coordination of and referral for medical and dental care, group discussions, and liaison with and training of health care professionals.

Article 15

130. Confessions or admissions obtained by an act of torture, including intimidation or coercion by way of threat, promise or inducement, would be inadmissible as evidence in Australian courts. Confessions are inadmissible in Australian courts if made involuntarily (Collins v. R. (1980) 31 ALR 257). It is for the court to decide if a confession was made voluntarily or if the person's will was overborne by pressure, inducement or oppression such that the confession was not made voluntarily.

131. The court also has a discretion to exclude real or confessional evidence, even where not given involuntarily, if in all the circumstances it would be unfair to use the evidence against the accused (McDermott v. R. (1948) 76 CLR 501; R v. Lee (1950) 82 CLR 133) or if the confession was illegally

obtained (Cleland v. R. (1982) 151 CLR 1). The courts' role in upholding the interests of justice make it highly improbable that a court could exercise its discretion in favour of the admission of evidence which was obtained by torture.

Article 16

132. Australia understands that the acts or conduct encompassed by the expression "cruel, inhuman or degrading treatment or punishment" would entail some lesser degree of severity than those more properly called torture, but would nevertheless be inconsistent with the inherent dignity and rights of the person. The expression encompasses such acts as excessive punishments out of proportion to the crime committed or treatment which grossly humiliates and debases a person.

133. Australia has taken steps to prevent such treatment or punishment occurring in Australia. Public officials, particularly police and prison officers, operate within a carefully defined system of duties and responsibilities. The training of police and prison officers and of medical personnel is directed to ensuring the safety of persons within their care; police and prison officers in particular are thoroughly trained in procedures for the minimal use of force and instructed to respect the human dignity of those in detention (see paras. 102-107).

134. As discussed at paragraphs 111-118, there are procedures in place for independent administrative investigations of complaints of misconduct of such officers. These procedures would be available should a complaint of conduct amounting to cruel, inhuman or degrading treatment or punishment be made. In addition, there is an independent judiciary which hears and adjudicates allegations of criminal conduct.

135. In the federal sphere, were an act or practice amounting to cruel, inhuman or degrading treatment or punishment under article 7 of the ICCPR to be inflicted on a person by a federal official, then the person who was the object of such treatment would be entitled to make a complaint to the Human Rights and Equal Opportunity Commission (see paras. 31-33). Under subsection 11 (1) of the Human Rights and Equal Opportunity Commission Act (the HREOC Act), the Commission would be empowered to inquire into the act or practice and to attempt to conciliate or settle the matter. If the Commission considered that the act or practice was contrary to any human right, including the rights protected under the ICCPR, the Commission would be empowered, where conciliation or settlement was not possible, to report to the Minister in relation to the inquiry. Under section 45 of the HREOC Act, such reports must be tabled in Parliament.

136. Australia accepts that the operation of the Convention is without prejudice to its obligations under other international instruments which prohibit cruel, inhuman or degrading treatment or punishment or which relate to extradition or expulsion. The operation of the Covention does not operate to the prejudice of national laws clearly with the same subject matter.